bona fides as a requisite, there is also a conflict, but by the decided weight of authority the claimant must have an honest belief in the validity of his title.[14] In some jurisdictions nothing less than fraud in securing the color of title constitutes *mala fides*.[15] On principle the only defense of good faith as a requirement for constructive adverse possession, though not for actual adverse possession, is the desire to restrict the scope of the former; for the doctrine of adverse possession is in reality extended to cases of claims under colorable title, not because of a *bona fide* reliance on the deed, but because the paper title is evidence of the extent of the claim.

The fiction of constructive adverse possession may be justified only if the disseisee must have notice of the claim and its extent. That an adverse claim exists, the actual possession of a part serves as notification; the color of title is evidence of the extent and nature of the claim.[16] If the color of title, therefore, is accessible to the true owner, he is reasonably chargeable with notice of the extent of the claim.[16] But it is not universally required that the color of title be recorded;[17] and to apply the doctrine of constructive possession under such circumstances is totally to disregard the principle underlying all adverse possession; namely, that the disseisee is justly chargeable with laches where the possession is such as is calculated to inform him of its existence.[18] In a number of states, statutes obviate this hardship by requiring the color of title to be recorded.[19]

WHAT CONSTITUTES AN INSURABLE INTEREST IN A LIFE. — Although doubts may exist in a few jurisdictions,[1] an insurable interest is, by statute or otherwise, almost universally requisite to the validity of a contract of life insurance;[2] for without such an interest the contract would be opposed to public policy, both as being a wager and as placing upon the insured a dangerous temptation to bring to pass the event upon which recovery rests.[3] As to what constitutes an insurable interest in a life the language of the courts has been at times confusing, although the actual decisions are less conflicting than the opinions might indicate.

The decisions may properly be divided into three classes. (1) Whenever the life is under a definite legal obligation to the insured, the performance of which would be rendered impossible or seriously hampered by death, the insured has a very real interest in the continuation of the life, and the policy is valid. So a master has an insurable interest in the life of a servant

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well established that constructive possession is limited to a small tract. Thompson *v.* Burhans, 79 N. Y. 93.

[14] Godfrey *v.* Dixon, 228 Ill. 487; Smith *v.* Young, 89 Ia. 338. *Contra:* Humbert *v.* Trinity Church, 24 Wend. (N. Y.) 587; Roe *v.* Tenn. Ry. Co., 50 So. 230 (Ala.).

[15] Foulke *v.* Bond, 41 N. J. L. 527, 541.

[16] Bailey *v.* Carleton, *supra.*

[17] Avent *v.* Arrington, 105 N. C. 377, 389; Jones *v.* Perry, 10 Yerg. (Tenn.) 59. *Contra,* Nye *v.* Alfter, 127 Mo. 529.

[18] Foulke *v.* Bond, *supra;* Bailey *v.* Carleton, *supra.*

[19] Breckenridge Co. *v.* Scott, 114 S. W. 930 (Tenn.); Holland *v.* Ferris, 114 S. W. 845 (Tex.).

[1] Trenton Mutual Life & Fire Insurance Co. *v.* Johnson, 24 N. J. L. 576.

[2] 1 Cooley, Briefs on Insurance, 246.

[3] Ruse *v.* Mutual Benefit Life Insurance Co., 23 N. Y. 516. See Cooke on Life Insurance, § 58.

to whose service he has a legal claim;[4] an employee under a contract for a term of years may insure the life of his employer;[5] and a creditor may insure the life of his debtor.[6] A father, being entitled to the services of a minor child has an insurable interest in the latter's life.[7] And as the father is under a legal obligation to support a minor child, the child has a like interest in the life of the father.[8] For the same reason, a wife may insure the life of her husband.[9] (2) In another class of cases it appears that there may be an insurable interest without a definite legal obligation or liability. It is enough if there is a reasonable certainty that the continuation of the life will be of direct, material advantage to the insured, but if such benefit would be only indirect or uncertain the requirement as to insurable interest is not satisfied.[10] So a sister may insure the life of a brother on whom she is dependent for support.[11] In some of the cases it has been said that in the absence of definite legal obligation of the life to the insured, some relationship between the life and the insured is essential.[12] This view however finds little support.[13] The fact of relationship is especially emphasized in the recent case of *Griffiths* v. *Fleming*, 100 L. T. R. 765, where it is held that a husband has an insurable interest in the life of his wife merely because of their relation.[14] There are several decisions and numerous *dicta* to the same effect.[15] A more sound explanation, however, is that relationship of itself does not constitute an insurable interest, but that it often gives rise to circumstances which properly bring a case within this second class.[16] (3) A very few cases hold that one upon whom the continuation of a life would bring further liability may effect a valid insurance on the life as reimbursement for future expenditures.[17] But as every interest of the insured, in such a case, lies in shortening the life, the insurance seems clearly against public policy.

The only generally admitted instance of valid life insurance which would come under none of the classes herein outlined is self-insurance. Just how to define the interest of a man in his own life is difficult, for recovery can come only after the death of the person assured. The suggestion that his

[4] Miller *v.* Eagle Life & Health Insurance Co., 2 E. D. Smith (N. Y.) 268; Bevin *v.* Connecticut Mutual Life Insurance Co., 23 Conn. 244.

[5] Hebdon *v.* West, 3 B. & S. 579.

[6] Amick *v.* Butler, 111 Ind. 578. See Ulrich *v.* Reinoehl, 143 Pa. St. 238.

[7] Mitchell *v.* Union Life Insurance Co., 45 Me. 104.

[8] Geoffroy *v.* Gilbert, 5 N. Y. App. Div. 98.

[9] Lewis *v.* Palmer, 106 Va. 522.

[10] See Wilton *v.* New York Life Insurance Co., 34 Tex. Civ. App. 156.

[11] Lord *v.* Dall, 12 Mass. 115. See Cronin *v.* Vermont Life Insurance Co., 20 R. I. 570.

[12] Trinity College *v.* Travelers Insurance Co., 113 N. C. 244.

[13] In Carpenter *v.* U. S. Life Insurance Co., 161 Pa. St. 9, a young girl adopted into a man's family was held to have an insurable interest in his life. A woman has an insurable interest in the life of a man who supports her and with whom she lives as wife although not legally married. Equitable Life Assurance Society *v.* Paterson, 41 Ga. 338, 365.

[14] The same result has been reached in this country but on the ground that a husband has a right to his wife's services. Currier *v.* Continental Life Insurance Co., 57 Vt. 496.

[15] Grattan *v.* National Life Insurance Co., 15 Hun (N. Y.) 74; Woods *v.* Woods, 113 S. W. 79 (Ky.). See Loomis *v.* Eagle Life & Health Insurance Co., 72 Mass. 396.

[16] May on Insurance, 4 ed., § 107.

[17] Reserve Mutual Insurance Co. *v.* Kane, 81 Pa. St. 154. See Life Insurance Clearing Co. *v.* O'Neill, 106 Fed. 800, 806.

estate, as the continuation of the *persona* of the assured, has the required interest seems not entirely satisfactory. Plainly, however, it is desirable that a man should be allowed to provide for his family in this way, and the courts have not hesitated to uphold such policies.[18]

WHO MAY EXECUTE A TRUST UPON DEATH OF THE TRUSTEE. — At common law the administrator of a trustee, *simpliciter*, has no right to perform the trust.[1] And when property is vested in A "and his heirs" upon a special trust, neither a devisee[2] nor an assignee *inter vivos*[3] is competent to execute it. If, however, property is vested in A, "his heirs and assigns," upon a special trust, the trust may be executed by a devisee of A, considered as a testamentary assignee,[4] but not by an assignee *inter vivos*.[5] The fact that in determining the power of a trustee the intent of the settlor is absolutely controlling is well brought out in a recent decision holding that as the discretionary power of a trustee to apply the principal of a trust fund for the benefit of the cestui is a matter of personal confidence, it cannot be exercised by a trustee appointed by the court upon the death of the original trustee. *Whitaker* v. *McDowell*, 72 Atl. 938 (Conn.). And it has also recently been held that the heir of the last survivor of several trustees to sell land cannot execute the trust or power of sale, because not pointed out in the instrument as one within the contemplation of the settlor.[6] An opposite conclusion reached upon almost identical facts may be distinguished upon the ground that the court apparently considered it to have been within the contemplation of the testator that the heir of the surviving trustee should act.[7] In all these cases, however, it must be understood that though the person in question is not indicated in the instrument as one to succeed to the trust, yet once having the legal title he must always hold the property subject to the trust.[8]

A distinction is taken by the courts between cases of trusts to which powers are annexed and cases of mixed trusts and powers. Thus where a deceased trustee had a *duty* to provide for the testatrix's daughter by using a discretionary power, it could be exercised by the trustee appointed by the court as his successor; for the testator had merely outlined the trust in expectation that the details would be arranged according to the judgment of his trustees.[9] In such a case of mixed trust and power, the power is imperative, and must be exercised; only the mode of its exercise is discretionary.[9] But where the power is simply annexed to the trust, the trust is

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[18] Campbell *v.* New England Insurance Co., 98 Mass. 381; Judson *v.* Walker, 155 Mo. 166.

[1] Mortimer *v.* Ireland, 11 Jur. 721.
[2] *In re* Morton & Hallett, 15 Ch. D. 143. But see Osborne *v.* Rowlett, 13 Ch. D. 774.
[3] Bradford *v.* Belfield, 2 Sim. 264.
[4] Titley *v.* Wolstenholme, 7 Beav. 425.
[5] Whittelsey *v.* Hughes, 39 Mo. 13.
[6] *Re* Crunden & Meux's Contract, 100 L. T. R. 472 (Ch. Div., May, 1909).
[7] *In re* Pixton & Tony's Contract (1897), 46 W. R. 187.
[8] See Ames, Cases on Trusts, p. 226, n. 1–2.
[9] Osborne *v.* Gordon, 86 Wis. 92.